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**RECORDER'S NOTE: THE INDUSTRIAL DEVELOPMENT AUTHORITY OF FAUQUIER COUNTY, VIRGINIA, AND THE COUNTY OF FAUQUIER, VIRGINIA, ARE EXEMPT FROM RECORDATION TAXES PURSUANT TO SECTION 58.1-811(E) OF THE CODE OF VIRGINIA OF 1950, AS AMENDED, AND CLERK'S FEES PURSUANT TO SECTION 17.1-266 OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.**

**NOTE PURCHASE AGREEMENT AND LEASE AGREEMENT**

**between and among**

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, VIRGINIA**

**THE BOARD OF SUPERVISORS OF  
THE COUNTY OF FAUQUIER COUNTY, VIRGINIA  
ON BEHALF OF  
THE COUNTY OF FAUQUIER, VIRGINIA**

**and**

\_\_\_\_\_ **BANK**

**Dated as of \_\_\_\_\_ 1, 2009**

**Relating to  
Industrial Development Authority  
of Fauquier County, Virginia  
Public Facility Revenue Note  
(Vint Hill Farms Project)  
Series of 2009**

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**THIS NOTE PURCHASE AGREEMENT AND LEASE AGREEMENT** dated as of \_\_\_\_\_ 1, 2009, between the **INDUSTRIAL DEVELOPMENT AUTHORITY OF FAUQUIER COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, as Lessor and a grantor for indexing purposes (the "Authority"), **THE BOARD OF SUPERVISORS OF THE COUNTY OF FAUQUIER, VIRGINIA, ON BEHALF OF THE COUNTY OF FAUQUIER, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, as Lessee and a grantee for indexing purposes (the "County"), and \_\_\_\_\_ **BANK**, \_\_\_\_\_, Virginia, a \_\_\_\_\_ banking corporation (the "Noteholder"), as purchaser of the Note (as hereinafter described), recites and provides as follows;

**W I T N E S S E T H:**

**WHEREAS**, the Authority is a political subdivision of the Commonwealth of Virginia duly created under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"); and

**WHEREAS**, the Authority is authorized to exercise all the powers set forth in the Act, which include, among other things, the power to make loans to, among others, a locality in furtherance of the purposes of the Act, to finance or refinance and lease facilities for use by, among others, a locality, to issue its revenue bonds, notes and other obligations from time to time for such purposes and to pledge all or any part of its revenues and receipts derived from payments received by the Authority in connection with its loans or from the leasing by the Authority of such facilities or from any other source, as security for the payment of the principal of and interest on any such obligations; and

**WHEREAS**, the County owns a certain parcel of real property located in Fauquier County, Virginia, as more fully described on Exhibit A attached hereto, on which it has acquired, constructed and equipped a County office building known as the Alice Jane Childs Building (such real property and all improvements now or hereafter thereon being, together, the "Premises"); and

**WHEREAS**, at the request of the County, the Authority desires to finance the costs of the Vint Hill wastewater treatment plant (the "Project") and desires to secure such loan in part by acquiring a leasehold interest in the Premises; and

**WHEREAS**, the County and the Authority have entered into a Prime Lease dated as of the date hereof (the "Prime Lease"), pursuant to which the County has agreed to lease the Premises to the Authority; and

**WHEREAS**, in furtherance of the purposes of the Act, the County has requested the Authority to lease the Premises back to the County, and the Authority has determined to issue its public facility revenue note and use the proceeds thereof to finance costs incurred in connection with the Project and costs of issuing such note and to lease the Premises back to the County; and

**WHEREAS**, the Authority and the County desire to set forth the terms and conditions of such lease and with the Noteholder to set forth the terms of such financing; and

**WHEREAS**, the County and the Authority desire to provide for the possibility of substituting for the Premises other property as leased collateral under this Lease Agreement and the Prime Lease, with the consent of the Noteholder; and

**WHEREAS**, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Agreement;

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1.     Definitions.**

In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings in this Agreement unless the context otherwise requires:

“2009 Project Fund” shall mean the fund established in Section 7.

“Act” shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

“Additional Rent” shall mean (a) reasonable costs and expenses of the Authority, (b) late charges due to the Authority and (c) all other amounts that the County agrees to pay under the terms of this Agreement, but not including Basic Rent.

“Agreement” shall mean this Note Purchase Agreement and Lease Agreement, including any amendments or supplements hereto.

“Assignment” shall mean the Assignment of Leases and Rents dated as of \_\_\_\_\_, 2009, between the Authority and the Noteholder, including any amendments or supplements thereto.

“Authority” shall mean the Industrial Development Authority of Fauquier County, Virginia, a political subdivision of the Commonwealth of Virginia, its successors and assigns.

“Authorized Representative of the Authority” shall mean any person (other than a representative of the County) designated to act on behalf of the Authority by certificate signed by its Chairman or Vice Chairman and filed with the County and the Noteholder.

“Authorized Representative of the County” shall mean any person designated to act on behalf of the County by certificate signed by its County Administrator and filed with the Authority and the Noteholder.

“Basic Rent” shall mean the payments due from the County pursuant to Section 10, in the amounts and on the dates set forth in Exhibit B attached hereto.

“Board of Supervisors” shall mean the Board of Supervisors of the County of Fauquier, Virginia, as the governing body of the County.

“Bond Counsel” shall mean shall mean a firm of attorneys nationally recognized on the subject of municipal bonds, which may be counsel to the Authority, the County or the Noteholder, and reasonably acceptable to the Authority and the Noteholder.

“Business Day” shall mean any day on which the Noteholder is open for the purpose of conducting a commercial banking business.

“Closing Date” shall mean the date of delivery of and payment for the Note.

“Code” shall mean the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings thereunder.

“Costs” or “Costs of the Project” shall mean the following: the cost of improvements, the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements, franchises and permits acquired, financing charges, interest prior to and during construction and for up to one year after completion of construction, start-up costs and operating capital, the cost of plans, specifications, surveys, estimates of costs, the cost of engineering, legal, financial and other professional services, including financial advisory services, the costs of issuing the Note, expenses necessary or incident to determining the feasibility or practicability of any such acquisition, construction or reconstruction, recording fees, settlement costs, printing costs, fees and charges of the Authority, fees or premiums in connection with insurance, rating agency fees, administrative expenses and such other expenses as may be necessary or incidental to the financing of the Project and the leasing of the Premises. Any obligation or expense incurred by the County in connection with any of the foregoing items of Cost may be regarded as a part of such Cost and reimbursed to the County out of the proceeds of the Note issued to finance the Project to the extent permitted by Section 1.150-1 of the Treasury Regulations of the Code.

“County” shall mean the County of Fauquier, Virginia.

“Financing Instruments” shall mean this Agreement, the Note, the Prime Lease and the Assignment.

“Fiscal Year” shall mean, with respect to the County, a twelve-month period commencing July 1 and ending June 30.

“Prime Lease” shall mean the Prime Lease dated as of \_\_\_\_\_ 1, 2009, between the County and the Authority, including any amendments or supplements thereto.

“Lease Term” shall mean the duration of the leasehold estate created in the Premises, as provided in Section 10.

“Net Proceeds” shall mean the gross proceeds from any insurance recovery, or action of condemnation or loss of title award in connection with the Premises less payments for attorneys’ fees and other expenses incurred in the collection of such gross proceeds.

“Note” shall mean the Public Facility Revenue Note (Vint Hill Farms Project), Series of 2009, of the Authority in the form of Exhibit C attached hereto, issued pursuant to this Agreement in the principal amount of \$\_\_\_\_\_, and dated the date of issuance.

“Noteholder” shall mean \_\_\_\_\_ Bank, a \_\_\_\_\_ banking corporation, or any successor, as holder of the Note.

“Payment of the Note” shall mean payment in full of the Note and the making in full of all other payments due and payable pursuant to this Agreement at the time of such payment.

“Permitted Encumbrances” shall mean, as of any particular time as to the Premises, (a) liens for taxes and special assessments not then delinquent, (b) liens for taxes and assessments which are delinquent but the validity of which is being contested in good faith and with respect to which the County shall have set aside adequate reserves, unless thereby any of the Premises or the interest of the County therein may be in danger of being lost or forfeited, (c) this Agreement and the Prime Lease and any security interests or other liens created hereby or thereby, (d) mechanics’ and materialmen’s liens incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to judgment, provided that the County shall have set aside adequate reserves with respect thereto, (e) restrictions, mineral rights, easements, rights of way, exceptions or reservations for the purpose of utilities (including but not limited to water and gas pipelines, sanitary and storm sewers, telephone lines, telegraph lines, power lines, substations and other facilities and equipment used in connection with such utilities), roads, streets, alleys, highways, railroads, dikes, canals, laterals, ditches, and other like purposes, or for the joint or common use of real property, in each case which do not materially impair the use of the Premises for the purposes for which it is or may reasonably be expected to be held, (f) such defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property owned or leased by the County for essential governmental purposes and similar in character to the Premises and as will not, in the opinion of the County Attorney, impair the use of the Premises for the purpose for which it is or may reasonably be expected to be held by the County, (g) present or future zoning laws and ordinances and (h) all exceptions on the title policy delivered in connection herewith.

“Premises” shall mean that certain parcel of real property located in Fauquier County, Virginia, as more fully described on Exhibit A attached hereto, together with all improvements now or hereafter located thereon.

“Project” shall mean the acquisition, construction and equipping of the Vint Hill wastewater treatment plant, \_\_\_\_\_.

“Sanitation Authority” shall mean the Fauquier County Water and Sanitation Authority, its successors and assigns.

## **Section 2.     Representations and Findings by Authority.**

The Authority makes the following representations and findings as the basis for its undertakings hereunder:

(a) The Authority is duly organized under the Act and has the power to execute and deliver the Financing Instruments to which it is a party, to perform its obligations thereunder, to issue the Note and loan the proceeds to the County, to lease the Premises to the County pursuant to the provisions of this Agreement and to carry out its other obligations under the Financing Instruments. The Project constitutes an “authority facility” within the meaning of the Act, and the lease of the Premises to the County furthers the purposes for which the Authority was organized. By proper corporate action, the Authority has duly authorized the execution and delivery of the Financing Instruments, the performance of its obligations thereunder and the issuance of the Note. Simultaneously with the execution and delivery of this Agreement, the Authority has issued and sold the Note to the Noteholder.

(b) To the best of its knowledge and belief, the Authority is not (1) in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing under the provisions of any such instrument that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder, (2) in violation of the Act or any other existing Virginia law, rule or regulation applicable to it or (3) in default under any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which any of its assets are subject, and the execution and delivery by the Authority of this Agreement and the Note and the performance of its obligations thereunder will not conflict with or result in the breach of or constitute a default under any of the above described documents or other restrictions.

(c) No further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (1) the issuance and delivery of the Note by the Authority, (2) the execution or delivery of or performance by the Authority of its obligations under the Financing Instruments to which it is a party or (3) the assignment and pledge by the Authority pursuant to this Agreement of the Basic Rent payments, as security for payment of the principal of and premium, if any, and interest on the Note.

(d) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to its knowledge, threatened against the Authority with respect to (1) the organization and existence of the Authority, (2) its authority to execute or deliver the Financing Instruments to which it is a party, (3) the validity or enforceability of any of such Financing Instruments or the performance of its obligations thereunder, (4) the title of any officer of the Authority who executed the Financing Instruments or (5) any authority or proceedings related to the execution and delivery of the Financing Instruments on behalf of the Authority. No such authority or proceedings have been repealed, revoked, rescinded or amended and all are in full force and effect.

(e) The Authority hereby finds that it is advisable to include interest on the Note within the Costs of the Project for the period during which the Project is under construction and up to one year after completion of construction.

(f) The Authority has designated the Note as a “qualified tax-exempt obligation” for the purpose of Section 265(b)(3) of the Code.

Notwithstanding anything herein to the contrary, any obligation the Authority may incur hereunder in connection with the financing of the Project or the leasing of the Premises shall not be deemed to constitute a general obligation of the Authority but shall be payable solely from the payments received from the County as Basic Rent or Additional Rent and the security therefor.

**Section 3.     Representations and Covenants by County.**

The County makes the following representations as the basis for its undertakings hereunder:

(a)     The County is a political subdivision of the Commonwealth of Virginia, has the power to enter into the Financing Instruments to which it is a party and perform its obligations thereunder, and by proper action has duly authorized the execution and delivery of the Financing Instruments to which it is a party and the performance of its obligations thereunder.

(b)     The County will use the Project, or cause the Project to be used, as an “authority facility” within the meaning of the Act until the expiration or sooner termination of this Agreement.

(c)     There is no litigation at law or in equity or any proceeding before any governmental agency pending or, to the best of its knowledge, threatened against the County that would affect (1) its authority to execute and deliver the Financing Instruments to which it is a party, (2) the validity or enforceability of such instruments or the performance of its obligations thereunder, (3) the title of any officer of the County executing such instruments, or (4) the power to undertake the Project.

(d)     The County is not in default in the payment of the principal of or interest on any of its material indebtedness for borrowed money and is not in default under any instrument under and subject to which any material indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(e)     The execution and delivery of the Financing Instruments to which it is a party and the performance by the County of its obligations thereunder do not and will not conflict with, or constitute a breach or result in a violation of any agreement or other instrument to which the County is a party or by which it is bound or any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the County or any of its property.

(f)     The County has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority that (1) are required to be obtained by the County as a condition precedent to the issuance of the Note or the execution and delivery of the Financing Instruments or (2) are required for the performance by the County of its obligations thereunder.

**Section 4.     Representations of Noteholder.**

The Noteholder makes the following representations as the basis for its undertakings hereunder:



- (a) The Noteholder is a \_\_\_\_\_ banking corporation.
- (b) The Noteholder has full power and authority to enter into this Agreement and purchase the Note, to perform the transactions contemplated hereby and to carry out its obligations hereunder and by proper action has duly authorized, executed and delivered this Agreement.
- (c) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Noteholder pending, or to the best of its knowledge, threatened with respect to (1) the authority of the Noteholder to execute and deliver this Agreement, (2) the validity or enforceability of this Agreement or the Noteholder's performance of its obligations hereunder, or (3) the title of any officers of Noteholder executing this Agreement.
- (d) The Noteholder acknowledges that it has experience and expertise in the purchase and ownership of obligations similar to the Note and that it is capable of evaluating the merits and risks of purchasing the Note.
- (e) The Noteholder is entering into this Agreement for its own account and acknowledges that no offering statement, prospectus or other comprehensive disclosure document containing material information with respect to the Authority or the County, this Agreement and the Note has been provided to it in connection with purchasing the Note; however, it has been provided with such information concerning the operations and financial condition of the Authority and the County as it has requested. The Noteholder has had an opportunity to make inquiries of such officers, employees, agents and attorneys of the Authority and the County as it considers appropriate in connection with purchasing the Note.
- (f) The Noteholder has no present intention of reselling or disposing and will not further sell or dispose of its interest in the Note in transactions constituting a "distribution" thereof (as that term is used in the Securities Act of 1933, as amended, and the regulations promulgated by the Securities and Exchange Commission thereunder).
- (g) The Noteholder understands and acknowledges that the scope of engagement of Hunton & Williams, Richmond, Virginia, Bond Counsel to the Authority and the County with respect to this Agreement and the Note, will be limited to matters set forth in their opinion based on their review of such proceedings and documents as they deem necessary to approve the validity of the Note and the Agreement and the tax-exempt status of interest on the Note, and that they have not been engaged and will not undertake to prepare or express an opinion as to the accuracy or completeness of any information that may have been furnished to the Noteholder or relied upon by it in making the decision to enter into this Agreement and purchase the Note.

**Section 5. Issuance and Sale of Note; Commitment of Noteholder.**

- (a) The Authority shall issue and sell the Note to the Noteholder and secure the Note by assigning to the Noteholder the payments of Basic Rent to be made by the County hereunder, and the Noteholder shall purchase the Note, all upon the terms and conditions set forth herein. The Note shall be payable on such dates and in such amounts, bear such interest at such rate(s) and payable on such dates, and be subject to prepayment all upon the terms set forth in the form

of the Note attached hereto as Exhibit C. All Financing Instruments shall be in form satisfactory to the Noteholder.

(b) It is specifically understood and agreed that the Authority makes no representation, covenant or agreement as to the financial position or business condition of the County and does not represent or warrant as to any statements, materials, representations or certifications furnished by the County in connection with the sale of the Note, or as to the correctness, completeness or accuracy thereof.

(c) The County represents that no Financing Instrument nor any information (financial or otherwise) furnished by or on behalf of the County in connection with the negotiation of the sale of the Note contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein not misleading. There is no fact that the County has not disclosed in writing to the Noteholder that will have a material adverse affect on the properties, business, prospects, profits or condition (financial or otherwise) of the County, or the ability of the County to perform its obligations under the Financing Instruments.

#### **Section 6. Conditions Precedent To Delivery of Note.**

The Noteholder shall accept delivery of the Note and pay the purchase price thereof (\$\_\_\_\_\_) only upon delivery to it in form and substance satisfactory to it of the following:

(a) Executed copies of the Financing Instruments, all in form acceptable to the Noteholder;

(b) (1) Evidence of the due authorization, execution and delivery of the Financing Instruments by the parties thereto and (2) certificates covering litigation, compliance with all applicable federal, state and local laws, restrictions and requirements, and prior agreements;

(c) An opinion or opinions of Bond Counsel satisfactory to the Noteholder that interest on the Note will be excluded from gross income for Federal income tax purposes and that the Note is a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code;

(d) Evidence of the completion and appropriate filing of Internal Revenue Service Form 8038-G with respect to the issuance of the Note, together with a non-arbitrage certificate of the Authority, confirmed by the County Administrator and the Director of Finance, with respect to the use of the proceeds of the Note and related matters;

(e) Such other documentation, certificates and opinions as may be reasonably required by the Noteholder or Bond Counsel for the Authority.

#### **Section 7. Agreement to Finance Project.**

(a) The Authority hereby agrees to loan the net proceeds of the Note to the County for purposes of financing Costs of the Project. There is hereby established the 2009 Project Fund to be held by the County. Contemporaneously with the execution hereof, the Noteholder, at the

request of the Authority and on its behalf, shall transfer to the County for deposit into the 2009 Project Fund the amount of \$ \_\_\_\_\_. The County shall use such moneys on deposit in the 2009 Project Fund, together with any earnings derived therefrom, only to pay Costs of the Project or, upon completion of the Project, to be applied to the payment of Basic Rent.

(b) The Authority agrees that the County or the Sanitation Authority, on behalf of the County, will have full responsibility for entering into all contracts for the acquisition, construction and equipping of the Project. The County hereby agrees to cause such acquisition, construction and equipping and, in carrying out such obligations, to:

- (i) obtain, or cause to be obtained, all licenses, permits and consents with respect to the Project (and the Authority shall have no responsibility therefor), and
- (ii) bring, or cause to be brought, any action or proceeding against any person that the Authority might bring with respect to the Project as the County shall deem proper.

#### **Section 8. Disclaimer of Warranties.**

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE COUNTY WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PREMISES, except that the Premises is free from encumbrances done, made or knowingly suffered by the Authority. The County recognizes that since the Project is being financed at the County's request and by contractors and suppliers selected by the County, THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE COUNTY'S PURPOSES OR NEEDS OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THIS AGREEMENT WILL PAY THE COST TO BE INCURRED IN CONNECTION THEREWITH.

#### **Section 9. Remedies Against Contractors.**

[Consider deleting because of WSA role --In the event of default of any contractor or subcontractor supplier under any construction contract in connection with the Project, the County will promptly proceed in its own name or as agent for the Authority, either separately or in conjunction with others, to exhaust the remedies of the Authority or the County, as agent for the Authority, against the contractor or subcontractor or supplier in default and against each surety for the performance of such contractor. The County agrees to advise the Authority, in writing, of the steps it intends to take in connection with any such default. The County may, in good faith and at the expense of the County, in its own name or in the name of the Authority, by notice from the County to the Authority, prosecute or defend any action or proceeding or take any other action involving such contractor, subcontractor, supplier or surety which the County deems reasonably necessary, and in such event the Authority agrees to cooperate fully with the County. Any amounts recovered by way of damages, refunds, adjustments or otherwise, net of reasonable expenses related thereto, in connection with the foregoing, shall be paid into the 2009 Project Fund or, if the acquisition, renovation and rehabilitation of the Project is completed, paid, subject

to any requirements of the Code, to the County to reimburse the County for any costs it incurred in connection with the foregoing, and then, any remaining amounts to the Authority as a credit against the next payment of Basic Rent.]

**Section 10. Lease Term; Payment of Basic Rent and Additional Rent.**

(a) The Lease Term shall commence on \_\_\_\_\_, 2009, and, unless sooner terminated in accordance with the provisions hereof, shall terminate at the earlier of (i) 11:59 p.m. (local Fauquier County time) on \_\_\_\_\_, 20\_\_, or (ii) the date all payments required by this Agreement have been made. If all payments required by this Agreement have not been made on \_\_\_\_\_, 20\_\_, the Lease Term shall end when all such payments shall have been made, but in no case shall the Lease Term end later than \_\_\_\_\_, 20\_\_.

(b) In satisfaction of its repayment obligation for the loan made by the Authority to the County in Section 7, the County agrees, subject to Section 11, to pay Basic Rent to the Authority on the dates and in the amounts set forth on Exhibit B attached hereto (as it may be amended from time to time) and to pay when due any Additional Rent. In accordance with the assignment made in Section 31, all payments of Basic Rent shall be made in lawful money of the United States to the Noteholder at its principal office or any other place that the Noteholder may designate in writing to the County and shall be credited to any amounts due from the Authority to the Noteholder under the Note.

**Section 11. Subject to Appropriation.**

(a) The County reasonably believes that funds sufficient to make all payments of Basic Rent and Additional Rent during the term of this Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make payments of Basic Rent and Additional Rent beyond the current Fiscal Year, the Board of Supervisors in authorizing the execution of this Agreement has stated its intent to make annual appropriations sufficient to make the payments of Basic Rent and Additional Rent.

(b) The County declares the nature of the Project essential to the proper operations of the County. The County anticipates that the need for the Project will not change during the term of this Agreement. **Notwithstanding anything in this Agreement to the contrary, the County's obligations to pay the cost of performing its obligations under this Agreement, including its obligations to pay all Basic Rent and Additional Rent, shall be subject to and dependent upon appropriations being made from time to time by the Board of Supervisors for such purpose;** provided, however, that the County Administrator or other officer charged with the responsibility for preparing the County's annual budget shall include in the budget for each Fiscal Year as a single appropriation the amount of all Basic Rent and estimated Additional Rent during such Fiscal Year. Throughout the Lease Term, the County Administrator or other officer charged with the responsibility for preparing the County's annual budget shall deliver to the Authority and the Noteholder within 10 days after the adoption of the annual budget for each Fiscal Year, but not later than 10 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to or credited to the payment of, the Basic Rent and estimated Additional Rent which will be due during such Fiscal Year has been budgeted by the Board of Supervisors in such budget and appropriated in a related appropriation resolution. If, by 15 days

after the beginning of the Fiscal Year, the Board of Supervisors has not appropriated funds for the payment of both Basic Rent and estimated Additional Rent for the then current Fiscal Year, the County Administrator or other officer charged with the responsibility for preparing the annual budget shall give written notice to the Board of Supervisors of the consequences of such failure to appropriate, including the right of Authority to terminate this Agreement in accordance with Section 30, and request the Board of Supervisors to consider a supplemental appropriation for such purposes.

(c) If at any time during a Fiscal Year, the amount appropriated in the budget for such Fiscal Year is insufficient to pay when due the Basic Rent and Additional Rent due from the County under this Agreement, the County Administrator or such other officer charged with the responsibility for preparing the County's budgets shall submit to the Board of Supervisors at its next regularly scheduled meeting or as promptly as practicable, but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit. The County Administrator or such other officer as designated shall deliver to the Authority and the Noteholder within 5 days after such meeting of the Board of Supervisors a certificate stating whether an amount equal to or credited to the payment of such deficit has been appropriated by the Board of Supervisors.

## **Section 12. Net Lease; Obligations of the County Unconditional.**

This is a net lease and, subject to Section 11, the obligation of the County to pay Basic Rent and Additional Rent and to observe and perform all other covenants, conditions and agreements hereunder shall be absolute and unconditional, irrespective of any rights of setoff, recoupment or counterclaim it might otherwise have against the Authority. Subject to Section 11, the County shall not suspend or discontinue any such payment or fail to observe and perform any of its other covenants, conditions and agreements hereunder and, except as provided in Section 30, shall not terminate this Agreement for any cause, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title to any part or all of the Premises, or frustration of purpose, or any damage to or destruction or condemnation of all or any part of the Premises, or any change in the tax or other laws of the United States of America, Commonwealth of Virginia or any political subdivision of either, or any failure of the Authority to observe and perform any covenant, condition or agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agreement. Nothing contained in this Section shall be construed to release the Authority from the performance of any of its obligations under this Agreement, and in the event the Authority should fail to perform any such obligation, the County may institute such action against the Authority as the County may deem advisable to compel performance so long as such action is consistent with the preceding sentence. The County may, after giving to the Authority ten (10) days' notice of its intention to do so, at its own expense and in its own name or in the name of the Authority, prosecute or defend any action or proceeding or take any other action involving third persons which the County reasonably deems necessary or desirable in order to secure or protect any of its rights hereunder, and in such event the Authority shall cooperate fully with the County and take all necessary action to effect the substitution of the County for the Authority in any such action or proceeding if the County shall so request.

**Section 13. Insurance.**

(a) During the Lease Term, the County shall, subject to Section 11, continuously maintain insurance with respect to the Premises against such risks and in such amounts as are customary for public bodies owning or operating similar facilities, including without limitation:

- (i) title insurance insuring fee simple title in the Premises to the County;
- (ii) public liability insurance to the extent of \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, arising out of the ownership or operation of the Premises;
- (iii) workers' compensation insurance with respect to the Premises;
- (iv) coverage to the extent of the lesser of (A) the full replacement cost of the Premises or (B) the amount of the principal component of Basic Rent remaining unpaid, against loss or damage by fire or lightning, with broad form extended coverage, including damage by windstorm, explosion, aircraft, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally included within such coverage (limited only as may be provided in the standard form for such coverage at the time in use in the Commonwealth of Virginia); and
- (v) comprehensive automobile liability insurance against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, arising out of the ownership, maintenance or use of the Project and the Premises.

(b) All such insurance shall be taken out and maintained with generally recognized responsible insurers selected by the County that have experience insuring similar facilities and may be written with deductible amounts comparable to those on similar policies carried by other public bodies owning or operating similar facilities. If any such insurance is not maintained with an insurer licensed to do business in Virginia or placed pursuant to the requirements of the Virginia Surplus Lines Insurance Law Article, Chapter 7.1, Title 38.1, Code of Virginia of 1950, as amended, or any successor provision of law, the County shall provide evidence reasonably satisfactory to the Authority and the Noteholder that such insurance is enforceable under the laws of the Commonwealth of Virginia. In each policy, other than policies of title insurance and workers' compensation insurance, the Authority and the Noteholder shall be named as additional insureds. The policies of insurance required by subsection (iv) above shall require that all Net Proceeds resulting from any claims be paid to the Noteholder. The County irrevocably assigns, transfers and sets over to the Noteholder all right, title and interest of the County in such Net Proceeds; provided, however, that if the Net Proceeds payable under any one claim shall not exceed \$100,000 and no event has occurred or is continuing that constitutes or that, by notice or lapse of time, or both, would constitute an Event of Default under this Agreement, such Net Proceeds shall be paid to the County to be used for purposes set forth in Section 21(b)(i) - Option A or Section 14.

(c) All such policies shall be deposited with the Noteholder, provided that in lieu of such policies there may be deposited with the Noteholder and the Authority a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full force and effect. Prior to the expiration of any such policy, the County shall furnish the Noteholder and the Authority evidence satisfactory to the Noteholder and the Authority that the policy has been renewed or replaced or is no longer required by this Agreement. Unless a policy with such an undertaking is available only at a cost which the County, with the consent of the Noteholder, determines to be unreasonable, each policy shall contain an undertaking by the insurer that such policy shall not be modified adversely to the interests of the Noteholder or the Authority or canceled without at least 30 days' prior notice to the Noteholder and the Authority.

(d) In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the County may maintain a program of self insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs; provided, however, that such alternative is reasonably acceptable to the Noteholder.

(e) To the extent losses for any damage to the Premises, however caused, are paid from the Net Proceeds of any insurance required by this Section, no claim shall be made and no suit shall be brought against the County by the Noteholder or anyone else claiming by, through or under it.

**Section 14. Maintenance; Taxes; Utility Charges.**

Subject to Sections 11, 21 and 22, the County shall maintain, preserve and keep the Premises, or cause the Premises to be maintained, preserved and kept, in good condition. The County shall not abandon the Premises during the Lease Term except pursuant to Section 30. Subject to Section 11, the County shall pay, in addition to the payments provided for in Sections 10 and 18, all of the expenses of maintenance of the Premises. Subject to Section 11, the County shall pay any and all taxes, assessments and utility charges payable with respect to the Premises. The County shall comply with all valid and applicable statutes, rules, regulations and permits in connection with the operation and maintenance of the Project and the Premises.

**Section 15. Proof of Payment of Taxes, etc.**

The County shall furnish the Noteholder or the Authority, upon request, proof of payment of any taxes, utility charges, insurance premiums, or other charges or payments required to be paid by the County under this Agreement.

**Section 16. No Encumbrances.**

The County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Premises, or the rights of the County and the Authority as herein provided, other than Permitted Encumbrances. Subject to Section 11, the County, at its own expense, shall promptly and duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above.

**Section 17. Installation of County's Own Furnishings and Equipment.**

The County may from time to time, in its discretion and at its own expense, install furnishings and equipment at the Premises. All furnishings and equipment so installed by the County shall remain the property of the County in which neither the Authority nor the Noteholder shall have any interest and may be modified or removed at any time while the County is not in default under this Agreement, except that all such furnishings and equipment shall be subject to a landlord's lien to the extent permitted under the laws of the Commonwealth of Virginia. Nothing contained in this Section shall prevent the County from purchasing furnishings and equipment and creating purchase money security interests therein pursuant to the Uniform Commercial Code of Virginia as security for the unpaid portion of the purchase price thereof, and each such security interest with respect to furnishings and equipment purchased by it under the provisions of this Section after the delivery of this Agreement shall, if appropriate financing statements are duly filed for record simultaneously with or prior to the installation at the Premises of the furnishings and equipment covered thereby, be prior and superior to such landlord's lien. The County shall pay as due the purchase price of and all costs and expenses with respect to the acquisition and installation of any furnishings and equipment installed by it pursuant to this Section.

**Section 18. Prepayment of Basic Rent; Option To Purchase.**

(a) [The County may, at its option, elect by 30 days' prior written notice to the Noteholder and the Authority to make prepayments from time to time of Basic Rent, to be applied by the Noteholder to redeem all or a portion of the Note. Any prepayments shall be in amounts sufficient to pay 100% of the principal to be redeemed, [plus a prepayment premium of \_\_\_\_%,] plus interest accrued to the prepayment date.]

(b) The County may, at its option, elect by notice to the Noteholder and the Authority to terminate the Authority's leasehold estate in the Premises pursuant to Section 8 of the Prime Lease upon payment of a purchase price equal to the aggregate principal amount of unpaid principal components of Basic Rent, together with an amount sufficient to pay any applicable premium on the portion of the Note then outstanding, plus accrued interest to the prepayment date of such portion, or if such portion is not subject to prepayment on such date, in an amount which shall be sufficient to defease such portion in accordance with the terms of the Note.

**Section 19. Release and Transfer of Premises.**

The Authority shall execute and deliver to the County or file such deeds and other instruments as may be reasonably necessary and proper to effect the transfer, conveyance, release and assignment of its leasehold interest in the Premises within 30 days after the payment or prepayment in full by the County of the Basic Rent then due and any Additional Rent then due. Any reasonable expenses incurred by the Authority in effecting such transfers, conveyances, releases and assignments shall constitute Additional Rent.

**Section 20. Limitation on Subleasing.**

The County shall not sublease the Premises, or any portion thereof, to any entity other than the Commonwealth of Virginia, a city, a county or a town, or any agency thereof, without



an opinion of Bond Counsel that such sublease or other availability would not adversely affect the exclusion of interest on the Note from gross income for Federal income tax purposes. The County shall send notice to the Noteholder and the Authority of any sublease of the Premises or any portion thereof within 30 days of entering into such sublease.

**Section 21. Damage or Destruction.**

(a) The County shall notify the Noteholder and the Authority immediately in the case of damage to or destruction from fire or other casualty of the Premises or any portion thereof during the Lease Term. If the County determines in good faith that the cost to repair, reconstruct and restore the Premises will not exceed \$100,000, the County shall retain, subject to Section 13, the Net Proceeds received with respect to such damage or destruction and apply such Net Proceeds to the repair, reconstruction and restoration of such portion of the Premises so damaged or destroyed to substantially the same condition as had existed prior to the event causing such damage or destruction. If such Net Proceeds are not sufficient to pay in full the cost of such repair, reconstruction and restoration, the County shall, subject to Section 11, pay so much thereof as is in excess of such Net Proceeds.

(b) If the Premises or any portion thereof is damaged or destroyed by fire or other casualty during the Lease Term and the County determines in good faith that the cost to repair, reconstruct and restore the Premises to the same condition as had existed prior to such damage or destruction will exceed \$100,000, then the County, upon the following conditions and within 90 days after the date such damage or destruction occurs, shall elect one of the following two options and give notice of such election to the Noteholder and the Authority:

- (i) Option A - Repair, Reconstruction and Restoration. The County may elect to repair, reconstruct and restore the Premises. Upon election of this Option A, the County shall proceed to cause the Premises to be repaired, reconstructed and restored to substantially the same condition as had existed prior to the event causing such damage or destruction, with such alterations and additions as the County may determine to be necessary or desirable and as will not impair the capacity or character of the Premises for the purposes for which it had been or was intended to be used prior to such damage or destruction. If such Net Proceeds are not sufficient to pay in full the cost of such repair, reconstruction and restoration, the County shall pay, subject to Section 11, so much of the cost thereof as may be in excess of such Net Proceeds. The County shall not be entitled by reason of the payment of such excess cost to any (A) interest in the Premises that it did not possess prior to such payment, (B) reimbursement from the Authority or the Noteholder, or (C) abatement or diminution of Basic Rent or Additional Rent.
- (ii) Option B - Prepayment of Basic Rent. The County may elect to apply such Net Proceeds to the prepayment of all or any portion of the principal components of Basic Rent, plus interest accrued to the date of prepayment, to be used by the Noteholder to redeem all or any portion of the Note.

## **Section 22. Condemnation and Loss of Title.**

(a) In the case of a taking of all or any part of the Premises or any right therein under the exercise of the power of eminent domain or any loss of all or any part of the Premises because of loss of title thereto, or the commencement of any proceedings or negotiations which might result in such a taking or loss, the party upon whom notice of such taking is served or with whom such proceedings or negotiations are commenced or who learns of a loss of title shall give prompt notice to the other and to the Noteholder. Each such notice shall describe generally the nature and extent of such condemnation, taking, loss, proceedings or negotiations. All obligations of the County under this Agreement (except obligations to pay Basic Rent when due) shall terminate as to the Premises or portion thereof as to which there is a loss of title or which is condemned or taken when such loss of title is finally adjudicated or when title thereto vests in the party condemning or taking the same, as the case may be (hereinafter referred to as the "termination date").

(b) In the event of any such loss of title, condemnation or taking, the County, upon the following conditions and within 90 days after the termination date therefor, shall elect one of the following two options and give notice of such election to the Noteholder and the Authority:

- (i) Option A - Repairs, Reconstruction and Restoration. The County may elect to have the Net Proceeds as to such loss of title, condemnation or taking used to repair, restore or reconstruct the portion of the Premises as to which there has been a loss of title, condemnation or taking to substantially its condition prior to such loss of title, condemnation or taking. Upon election of this Option A, the County shall apply so much as may be necessary of the Net Proceeds received by it on account of such loss of title, condemnation or taking to payment of such repair, reconstruction or restoration of the Premises, either on completion thereof or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such repair, reconstruction or restoration, the County shall pay, subject to Section 11, so much of the cost thereof as may be in excess of such Net Proceeds. The County shall not be entitled by reason of the payment of such excess cost to any (A) interest in the Premises that it did not possess prior to such payment, (B) reimbursement from the Authority or the Noteholder, or (C) abatement or diminution of the Basic Rent or Additional Rent.
- (ii) Option B - Prepayment of Basic Rent. The County may elect to apply such Net Proceeds to the prepayment of all or any portion of the principal component of Basic Rent, plus interest accrued to the date of prepayment, to be used by the Noteholder to redeem all or any portion of the Note.

(c) The Authority shall, at the expense of the County, cooperate fully with the County in the contest of any prospective or pending condemnation proceedings or in any contest over title with respect to the Premises or any portion thereof and shall, to the extent it may lawfully do so, permit the County to litigate, at the expense of the County, in any such proceeding in the name and behalf of the Authority. In no event shall the Authority voluntarily settle, or consent to

the settlement of, any prospective or pending condemnation proceedings, or proceedings as to title with respect to the Premises or any portion thereof without the consent of the County.

**Section 23. Release of Premises.**

In the event that the County elects to prepay all or any portion of the Basic Rent pursuant to Section 21(b)(ii) or 22(b)(ii), the Prime Lease may be amended, at the option of the County, to release any portion of the Premises from the terms of the Financing Instruments so long as the removal of such portion of the Premises (a) leaves the Premises with a market value, as determined by a licensed real estate appraiser or an equipment appraiser mutually acceptable to the Authority and the County, at least equal to the sum of the principal components of Basic Rent remaining unpaid and (b) leaves a useable portion of the Premises.

**Section 24. Events of Default.**

(a) Subject to the provisions of Section 11, the following shall be “Events of Default” under this Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (i) Failure of the County (A) to pay the full amount of Basic Rent within 10 days of the date established under Section 10 or (B) to make any payment of Additional Rent required by Section 10 when due;
- (ii) Failure of the County to pay when due any payment due under this Agreement, other than payments under Section 10, or to observe and perform any covenant, condition or agreement on its part to be observed or performed, which failure shall continue for a period of 30 days after notice is given, or in the case of any such default that cannot with due diligence be cured within such 30 day period but can be cured within the succeeding 60 days, failure of the County to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence; or
- (iii) Bankruptcy or insolvency of the County, or failure by the County to lift any execution or attachment on the Premises or any portion thereof, which failure shall continue for a period of 60 days after notice is given, or in the case of any such default that cannot with due diligence be cured within such 60 day period but can be cured within the succeeding 60 days, failure of the County to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(b) The provisions of the foregoing subparagraph (a)(ii) are subject to the limitation that if by reason of force majeure the County is unable in whole or in part to perform any of its covenants, conditions or agreements hereunder other than those set forth in Sections 10, 11, 12, 13, 14, 15, 16 and 33, the County shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall include without limitation acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or the Commonwealth of Virginia or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military

authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the County. The County shall remedy with all reasonable dispatch the cause or causes preventing the County from carrying out its covenants, conditions and agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the County, and the County shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of any opposing party when such course is in the judgment of the County not in its best interests.

**(c) Notwithstanding anything contained in this Section to the contrary, failure by the County to pay when due any payment required to be made under this Agreement or failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement resulting from failure of the County to appropriate moneys for such purposes, as described in Section 11, shall not constitute an Event of Default. Upon any such failure to appropriate, the provisions of Section 30 shall be applicable.**

## **Section 25. Remedies.**

Whenever any Event of Default shall have happened and is continuing, the Authority may take any one or more of the following remedial steps, without further demand or notice: (a) declare immediately due and payable the entire unpaid principal balance of Basic Rent due and thereafter to become due through and including \_\_\_\_\_, 20\_\_\_; (b) reenter and take possession of all or any portion of the Premises, with or without terminating this Agreement, exclude the County from possession, and sell or lease the County's leasehold estate in all or any portion of the Premises for the account of the County, holding the County liable for all Basic Rent and Additional Rent due up to the effective date of such sale or lease and for the difference between the purchase price, rent and other amounts paid by the purchaser or lessee pursuant to such sale or lease and the rents, interest calculated pursuant to (a) above, and the Basic Rent and other amounts payable by the County hereunder; or (c) take whatever action at law or in equity may appear necessary or desirable to collect the Basic Rent and the Additional Rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the County under this Agreement. In any of such cases, all rights and interests created or then existing in favor of the County as against the Authority hereunder shall cease and terminate, and the right to the possession of the Premises and all other rights acquired by the County hereunder shall revert to and revest in the Authority without any act of re-entry, or any other act of the Authority to be performed and without any right of the County of return, reclamation or compensation for moneys paid under this Agreement as absolutely, fully and perfectly as if this Agreement and such payments had never been made; and in case of such default all payments theretofore made on this Agreement are to be retained by and belong to the Authority as the agreed and reasonable rent of the Premises up to the time of such default. Any amounts received by the Authority pursuant to the foregoing provisions shall be applied first to costs, then to any unpaid interest and then to repayment of the principal components of Basic Rent, and upon payment in full of all amounts due such excess shall be credited to the next payment of Basic Rent.

**Section 26. Reinstatement after Event of Default.**

Notwithstanding the exercise by the Authority of any remedy granted by Section 25, unless the Authority or its assignee shall have sold its leasehold estate in all or any portion of the Premises or shall have entered into an agreement providing for the reletting of all or any portion of the Premises for at least one year, if the balance of Basic Rent shall not have been accelerated pursuant to Section 25(a) and all overdue Basic Rent, together with any interest thereon, and all Additional Rent shall have been paid, then the County's default under this Agreement shall be waived without further action by the Authority. Upon such payment and waiver, this Agreement shall be fully reinstated and all Basic Rent payments will be due and payable in accordance with Exhibit B, and the County shall be restored to the use, occupancy and possession of the Premises; provided, however, if all or any portion of the Premises has been relet for less than one year, the County shall not be restored to the use, occupancy and possession thereof until the end of such lease.

**Section 27. No Remedy Exclusive.**

No remedy conferred by this Agreement upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof or acquiescence therein, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 28. No Additional Waiver Implied by One Waiver.**

Failure by the Authority at any time to require performance by the County of any provision hereof shall in no way affect the Authority's right hereunder to enforce the same, nor shall any waiver by the Authority of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

**Section 29. Attorney's Fees and Other Expenses.**

Subject to Section 11, the County shall on demand pay to the Authority and the Noteholder the reasonable fees of attorneys and other reasonable expenses incurred by either of them in the collection of appropriated, but unpaid, Basic Rent or Additional Rent, or the enforcement of any other obligation of the County, or its agents, upon an Event of Default.

**Section 30. Termination of Agreement.**

(a) **Right To Terminate.** If by June 30 of any year, the Board of Supervisors has failed to appropriate moneys sufficient for the payment of Basic Rent and estimated Additional Rent for the following Fiscal Year (an "Event of Non-Appropriation"), the County Administrator shall give notice to the Authority and the Noteholder of such failure to appropriate within 5 business days thereafter, and if no such appropriation has been made by the following August 15 of such year, the County and the Authority each shall have the right to terminate this Agreement by giving notice of the exercise of its rights pursuant to this Section to the other party and the

Noteholder. If the Authority terminates this Agreement, its notice to the County shall specify a date not sooner than 30 days and not later than 60 days thereafter for such termination.

(b) **Rights upon Termination.** Upon termination of this Agreement, the Authority may exclude the County from possession of the Premises and sell or lease the County's leasehold estate in the Premises in the manner provided by Section 25.

(c) **Reinstatement after Termination.** Notwithstanding any termination of this Agreement in accordance with this Section, unless the Authority or its assignee has sold its leasehold interest in all or any portion of the Premises or has entered into an agreement providing for the reletting of all or any portion of the Premises for a period of at least one year, if all overdue Basic Rent, together with any interest thereon, and Additional Rent has been paid and payment of Basic Rent has not been accelerated or such acceleration has been waived by the Noteholder, this Agreement shall be fully reinstated, and the County shall be restored to the use, occupancy and possession of the Premises provided that the conditions set forth in Section 26 are satisfied.

### **Section 31. Assignment.**

The Authority hereby assigns all of its rights in and to this Agreement (except its rights to receive payment of its fees and expenses, to receive notices and to give consents) to the Noteholder. Although this assignment is effective immediately, so long as no Event of Default exists, the Authority gives to and confers upon the Noteholder the privilege under a revocable license to collect as they become due, but not prior to accrual, the Basic Rent and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of the Authority for all such Basic Rent. Upon any occurrence of an Event of Default, the license granted to the Authority herein shall be automatically revoked without further notice to or demand upon the Authority, and the Noteholder shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, (i) to enter upon and take possession of the Premises, (ii) notify tenants, subtenants and any property manager to pay Basic Rent to the Noteholder or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by the Authority, and (iii) in its own name, sue for or otherwise collect Basic Rent, including those past due, and apply Basic Rent, less costs and expenses of operation and collection, including attorneys' fees, to the payment of the Note in such order and manner as the Noteholder may determine or as otherwise provided for herein. The Noteholder's exercise of any one or more of the foregoing rights shall not cure or waive any Event of Default. The remedies granted in this paragraph are in addition to the other remedies provided in this Lease Agreement or in any other instrument securing the Note, and no exercise hereunder shall prevent a simultaneous or subsequent exercise of any other such remedy. THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR "SECURITY ONLY."

The County (a) consents to such assignment, (b) agrees to execute and deliver such further acknowledgments, agreements and other instruments as may be reasonably requested by the Authority or the Noteholder to effect such assignment, (c) agrees to make all payments due to the Authority under this Agreement directly to the Noteholder (except the Authority's fees and expenses), subject to Section 11, and (d) agrees to comply fully with the terms of such

assignment so long as such assignment is not inconsistent with the provisions hereof. All references in this Agreement to the Authority (except references to the Authority in Section 2) shall include the Noteholder and its successors and assigns, whether or not specific reference is otherwise made to the Noteholder, unless the context requires otherwise.

**Section 32. No Merger.**

So long as any Basic Rent remains unpaid and unless the Noteholder otherwise consents in writing, the fee simple and the leasehold estates in and to the Premises shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates by purchase or otherwise in the Authority, the Noteholder, the County, any lessee or any third party.

**Section 33. Use of Proceeds; Other Matters with Respect to Project, Note and Tax Exemption.**

(a) **Use of Proceeds; Prohibited Uses of Project, etc.** Neither the Authority nor the County shall cause any proceeds of the Note to be expended except pursuant to this Agreement. The County shall not take any action, or approve any investment or use of the proceeds of this Agreement (including failure to spend the same with due diligence) or taking any other action, which would cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code, or otherwise cause the interest due on the Note to be includable in the gross income of the Noteholder under existing statutes. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the County at any time to rebate to the United States any part of the earnings derived from the investment of the funds received under this Agreement, unless the County receives an opinion of Bond Counsel that such compliance is not required to prevent the interest on the Note from being includable in the gross income for federal income tax purposes of the Noteholder under existing law.

(b) **Arbitrage and Rebate.**

- (i) Neither the County nor the Authority shall (A) take or omit to take any action, or approve the investment or use of any proceeds of the Note or any other moneys within their respective control (including, without limitation, the proceeds of any insurance or any condemnation award with respect to the Project) or the taking or omission of any other action, which would cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code, or (B) approve the use of any proceeds from the sale of the Note otherwise than in accordance with the Authority’s “non-arbitrage” certificate delivered on the Closing Date and shall otherwise comply with the “non-arbitrage” certificate.
- (ii) (A) The County shall, at its sole expense, determine and pay on behalf of the Authority the Rebate Amount, hereinafter defined, to the United States, as and when due, in accordance with the “rebate requirement” described in Section 148(f) of the Code and Treasury Regulations thereunder, including without limitation, Treasury

Regulations Section 1.148, and retain records of all such determinations until six years after Payment of the Note.

- (B) The Authority, at the request and direction of the County, for purposes of calculating amounts due under this Section, hereby selects June 1 as the end of the bond year with respect to the Note. The County, by certificate delivered to the Authority, may select another date to be the end of the bond year prior to the date that any amount with respect to the Note is paid or required to be paid to the United States of America in compliance with Section 148 of the Code or Treasury Regulations issued thereunder.
- (C) Within 30 days after June 1, 2014, the last day of the fifth bond year (the "Initial Installment Computation Date"), and at least once every five years thereafter, the County will cause to be computed the amount due the United States Treasury pursuant to Section 148(f) of the Code and regulations thereunder (the "Rebate Amount") and will deliver a copy of such computation setting forth the Rebate Amount (the "Rebate Amount Certificate"), together with an opinion or report prepared by the expert referred to in the following sentence, to the Authority. Prior to any payment of the Rebate Amount to the United States of America required by Section 148 of the Code, the Rebate Amount Certificate setting forth such Rebate Amount shall be prepared or approved by (i) a person with experience in matters of accounting for federal income tax purposes, (ii) a bona fide arbitrage rebate calculating and reporting service, or (iii) Bond Counsel.
- (D) Not later than 60 days after the Initial Installment Computation Date, the County, on behalf of the Authority, shall pay to the United States of America 90% of the Rebate Amount as set forth in the Rebate Amount Certificate prepared with respect to such installment computation date. At least once, on or before 60 days after the installment computation date that is the fifth anniversary of the Initial Installment Computation Date and on or before 60 days after every fifth anniversary date thereafter, until Payment of the Note, the County, on behalf of the Authority, shall pay to the United States of America the amount, if any, by which 90% of the Rebate Amount set forth in the most recent Rebate Amount Certificate exceeds the aggregate of all such payments theretofore made to the United States of America pursuant to this Section.
- (E) On or before 60 days after Payment of the Note, the County, on behalf of the Authority, shall pay to the United States of America the amount, if any, by which 100% of the Rebate Amount set forth in the Rebate Amount Certificate with respect to the date of Payment of the Note exceeds the aggregate of all payments



theretofore made pursuant to this Section. All such payments shall be made by the County, on behalf of the Authority, from any available source.

- (F) Notwithstanding anything contained herein to the contrary, no such payment will be made if the County receives and delivers to the Authority and the Noteholder an opinion of Bond Counsel that such payment is not required under the Code to prevent the Note from becoming an “arbitrage bond” within the meaning of Section 148 of the Code.
- (G) The Authority shall not be liable to the County by way of contribution, indemnification, counterclaim, set-off or otherwise for any payment made or expense incurred by the County pursuant to this Section.
- (H) Nothing herein shall obligate the County to calculate and pay rebate if it qualifies for an exception from the requirements of such rebate. Reference is made to the Authority’s Non-Arbitrage Certificate dated \_\_\_\_\_, 2009 (the “Non-Arbitrage Certificate”), and the certificates thereto, executed by the Authority and the County concurrently with the issuance of the Note. The Non-Arbitrage Certificate shall contain the agreement of the County with respect to any exceptions to rebate, if applicable. The representations and covenants made in the Non-Arbitrage Certificate are incorporated by reference as if contained herein and shall constitute part of this Agreement.
- (I) For purposes of this arbitrage rebate covenant, the term “Payment of the Note” shall mean payment in full of the Note.

#### **Section 34. Limitation of Authority’s Liability.**

No covenant, agreement or obligation contained in any Financing Instrument shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority in his individual capacity, and neither the directors of the Authority nor any officer, employee or agent thereof executing any Financing Instrument shall be liable personally on such Financing Instrument or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Authority shall incur any personal liability with respect to any other action taken by him pursuant to the Financing Instruments or the Act or any of the transactions contemplated thereby provided he acts in good faith.

THE OBLIGATIONS OF THE AUTHORITY UNDER THE FINANCING INSTRUMENTS TO WHICH IT IS A PARTY ARE NOT GENERAL OBLIGATIONS OF THE AUTHORITY but are limited obligations payable solely from the revenues and receipts derived by the Authority pursuant to this Agreement, which revenues and receipts have been

pledged and assigned to such purposes. THE OBLIGATIONS OF THE AUTHORITY HEREUNDER SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY, SHALL BE OBLIGATED TO PAY THE OBLIGATIONS HEREUNDER OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES, RECEIPTS AND PAYMENTS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY, IS PLEDGED TO THE PAYMENT OF THE NOTE.

**Section 35. Registration of the Note.**

The Note shall be issued in registered form without coupons, payable to the registered owner or registered assigns. The Authority shall keep books for the registration of transfer of the Note as the Note Registrar. The transfer of the Note may be registered only upon an assignment executed by the registered owner in such form as shall be satisfactory to the County and the Authority, such registration to be made on the registration books and endorsed on the Note by the Noteholder. The person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of and interest on the Note shall be made only to or upon the order of the registered owner thereof or his legal representative.

**Section 36. Notices.**

Except as may otherwise be provided in the Prime Lease, all demands, notices, approvals, consents, requests and other communications hereunder and under the Prime Lease shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed:

(a) if to the **County**, at 10 Hotel Street, Warrenton, Virginia 20186 (Attention: Director of Finance);

(b) if to the **Authority**, at 10 Hotel Street, Warrenton, Virginia 20186 (Attention: Chairman); or

(c) if to the **Noteholder**, at \_\_\_\_\_ (Attention: \_\_\_\_\_).

A duplicate copy of each notice, approval, consent, request or other communication given under any Financing Instrument by either the Authority or the County to the other shall also be given to the Noteholder. The Authority, the County and the Noteholder may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests, or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 37. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute but one and the same instrument; except that (a) to the extent, if any, that this Agreement shall constitute personal property under the Uniform Commercial Code of Virginia, no security interest in this Agreement may be created or perfected through the transfer or possession of any counterpart of this Agreement other than its original counterpart, which shall be the counterpart containing the receipt therefor executed by the Noteholder following the signatures to this Agreement.

**Section 38. Miscellaneous.**

(a) To the extent not paid from proceeds of the Note, the County agrees to pay from legally available funds (1) the reasonable fees and expenses of the Authority, counsel to the Authority and Bond Counsel and all other costs, fees and expenses incidental to the financing hereunder, the issuance of the Note and the costs of producing the documents referred to herein, (2) all taxes of any kind whatsoever lawfully assessed, levied or imposed with respect to the transactions contemplated by this Agreement, (3) all taxes of any kind whatsoever lawfully assessed, levied or imposed with respect to the filings or recordings pursuant to the Financing Instruments and (4) all costs of collection (including reasonable counsel fees) in the event of a default in the payment of the principal of, premium, if any, or interest on the Note or other charges payable under the Financing Instruments.

(b) The Noteholder shall furnish to the Authority upon request (i) a statement of the amount of principal of the Note outstanding and unpaid as of the date of such request, and (ii) such information as may be necessary to complete the annual audit of the Authority as required by the Act or any other law, now or hereafter in effect.

(c) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and the subsequent holders of the Note and their respective successors and assigns. The representations, covenants and agreements contained herein shall continue notwithstanding the delivery of the Note to the Noteholder.

(d) If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

(e) This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia. The Financing Instruments express the entire understanding among the parties and none of such instruments may be modified except in writing signed by the parties thereto. No Financing Instrument may be modified before Payment of the Note without the consent of the Noteholder.

**Section 39. Substitution of Leased Collateral.**

The County may elect to release the Premises from the terms of this Agreement and substitute other property as leased collateral under this Agreement; provided that the substitute property, on the date of substitution, has a market value, as determined by a licensed real estate

appraiser mutually acceptable to the Authority, the County and the Noteholder, at least equal to the principal amount of the Note then outstanding.

At such time as the County elects to substitute property as the leased collateral under this Agreement, this Agreement shall be amended pursuant to the terms of an Amendment to Note Purchase Agreement and Lease Agreement, in substantially the form of Exhibit D hereto, to be entered into by the Authority, the County and the Noteholder.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names, all as of the date first above written.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, VIRGINIA**

By \_\_\_\_\_  
Chairman

COMMONWEALTH OF VIRGINIA   )  
  )  
\_\_\_\_\_  
  )

The foregoing instrument was acknowledged before me in \_\_\_\_\_, Virginia, this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, Chairman, Industrial Development Authority of Fauquier County, Virginia.

My commission expires: \_\_\_\_\_

My Registration Number is: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

By \_\_\_\_\_  
County Administrator

---

Notary Public

---

By\_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA )  
 )  
 )  
 \_\_\_\_\_ )

The foregoing instrument was acknowledged before me in \_\_\_\_\_, Virginia, this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ Bank.

My commission expires: \_\_\_\_\_

My Registration Number is: \_\_\_\_\_

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N. 4. D. 11.

**DESCRIPTION OF PREMISES**



**BASIC RENT PAYMENT SCHEDULE**

<b>Due Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Payment</b>
-----------------	------------------	-----------------	----------------------


Form of Note

REGISTERED

REGISTERED

R-1

\_\_\_\_\_, 2009

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, VIRGINIA

Public Facility Revenue Note  
(Vint Hill Farms Project)  
Series of 2009

The Industrial Development Authority of Fauquier County, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), for value received, hereby promises to pay, solely from the source and as hereinafter provided, to the order of \_\_\_\_\_ Bank (the "Noteholder"), at its principal office in \_\_\_\_\_, Virginia, or at such other place as the holder of this note may in writing designate, the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), together with interest on the unpaid principal at the rate of \_\_\_\_\_ % per year, calculated on the basis of a 360-day year of twelve 30-day months. Installments of interest shall be payable semiannually, in arrears, on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, beginning \_\_\_\_\_ 1, 2010, until maturity, in the amounts set forth on Schedule I attached hereto. Installments of principal shall be paid annually on \_\_\_\_\_ 1 in the years and amounts set forth on Schedule I. If the date on which any payment is due with respect to this note is not a Business Day (as hereinafter defined), the payment shall be made on the next succeeding Business Day. "Business Day" shall mean any day on which the Noteholder is open for the purpose of conducting a commercial banking business. If not sooner paid, the final payment, consisting of all unpaid principal and interest, shall be due and payable on \_\_\_\_\_ 1, 20\_\_\_\_. All payments of principal and interest shall be made in lawful money of the United States in immediately available funds at the office of the Noteholder in \_\_\_\_\_, Virginia.

This note is authorized and issued pursuant to the Industrial Development and Revenue Note Act (Chapter 49, Title 15.2, Code of Virginia of 1950, as amended) for the purpose of financing the Vint Hill wastewater treatment plant (the "Project") for the benefit of Fauquier County, Virginia (the "County"), pursuant to a Note Purchase Agreement and Lease Agreement dated as of \_\_\_\_\_ 1, 2009 (the "Agreement"), between the Authority, the County and the Noteholder. Pursuant to the Agreement, as security for the Authority's loan of the Note proceeds to the County, the Authority will lease to the County the Premises (as defined in the Agreement) in return for the payment of Basic Rent by the County to the Authority, which the Authority has pledged to the Noteholder as security for this note. Reference is hereby made to the Agreement and all amendments and supplements thereto for a description of the provisions with respect to

the nature and extent of the security for this note, the rights, duties and obligations of the Authority and the rights of the holder of this note with respect thereto. All capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

**The obligation of the County to make payments under the Agreement does not constitute a debt of the County within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of the County beyond any fiscal year for which the County has appropriated moneys to make such payments. The County has covenanted in the Agreement that the County Administrator shall include in the County's annual budget the amount of payments under the Agreement, but the County is not obligated to make appropriations for such purpose. The Authority shall have no obligation or liability to the Noteholder with respect to the County's obligations to make payments under the Agreement or with respect to the performance by the County of any other covenant contained therein.**

This note may be prepaid only as provided in the following paragraph.

[Upon at least 30 days' prior written notice, this note is prepayable, in whole or in part, at any time, upon payment of 100% of the principal to be paid and interest accrued and unpaid to the date of prepayment.]

[This note is required to be redeemed prior to maturity, in whole or in part at any time, upon payment of a redemption price of 100% of the principal amount thereof to be redeemed plus interest accrued to the redemption date, in the event that the County elects not to use the net proceeds of any insurance recovery or condemnation award to restore the Premises or any integral portion thereof under circumstances involving (a) loss of time to all or any integral portion of the Premises, (b) condemnation, or sale in lieu thereof, of all or any integral portion of the Premises, or (c) damage to all or any integral portion of the Premises resulting from fire or other casualty loss. In the event of a partial redemption of this note from such proceeds, the portion of the note to be redeemed shall correspond to the principal components of Basic Rent paid such proceeds.]

The Agreement provides that the Noteholder, at its option, may declare all amounts payable under this note to be immediately due and payable upon an Event of Default thereunder, and upon such declaration all amounts hereunder shall become immediately due and payable.

THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST HEREON ARE LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED BY THE AUTHORITY FROM THE COUNTY PURSUANT TO THE AGREEMENT, WHICH REVENUES AND RECEIPTS HAVE BEEN PLEDGED AND ASSIGNED TO SECURE PAYMENT THEREOF. THIS NOTE AND THE PREMIUM, IF ANY, AND THE INTEREST HEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY, SHALL BE OBLIGATED TO PAY

THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED AND ASSIGNED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENT THERETO. NO COVENANT, CONDITION OR AGREEMENT CONTAINED HEREIN SHALL BE DEEMED TO BE A COVENANT, AGREEMENT OR OBLIGATION OF ANY PRESENT OR FUTURE DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE AUTHORITY IN HIS INDIVIDUAL CAPACITY, AND NEITHER THE DIRECTORS OF THE AUTHORITY NOR ANY OFFICER THEREOF EXECUTING THIS NOTE SHALL BE LIABLE PERSONALLY ON THIS NOTE OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

This note is registered in the name of the holder hereof on the registration books kept by the Note Registrar designated pursuant to the Agreement, which registration has been made in said registration books and endorsed hereon by the Note Registrar, and no registration of transfer hereof shall be valid unless made on said registration books at the written request of the holder as provided in the Agreement.

The Authority has designated this Note as a “qualified tax-exempt obligation” for the purpose of Section 265(b)(3) of the Code.

All acts, conditions and things required to happen, exist or to be performed precedent to and in the issuance of this note have happened, exist and have been performed.

IN WITNESS WHEREOF, the Industrial Development Authority of Fauquier County, Virginia, has caused this note to be signed by its Chairman, its seal to be affixed hereon and attested by its Secretary, and this note to be dated \_\_\_\_\_, 2009.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, VIRGINIA**

(SEAL)

By \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sell(s), assign(s) and transfer(s) unto

---

(Please print or type name and address, including zip code, of Transferee)

[PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFeree:]

\_\_\_\_\_  
:  
:  
:  
:  
:

the within bond and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_,  
Attorney, to transfer said bond on the books kept for the registration thereof, with full power of  
substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by an Eligible Guarantor Institution such  
as a Commercial Bank, Trust Company,  
Securities Broker/Dealer, Credit Union,  
or Savings Association who is a  
member of a medallion program  
approved by The Securities Transfer  
Association, Inc.

\_\_\_\_\_  
(Signature of Registered Owner

NOTICE: The signature above must  
correspond with the name of the  
registered owner as it appears on the  
front of this bond in every particular  
without alteration or enlargement  
or any change whatsoever.

## TRANSFER OF NOTE

The transfer of this note may be registered by the Registered Owner or its duly authorized attorney or legal representative upon presentation hereof to the Note Registrar who shall make note of such transfer in books kept by the Note Registrar for that purpose and in the registration blank below.

<b><u>Date of Registration</u></b>	<b><u>Name of Registered Owner</u></b>	<b><u>Signature of Note Registrar</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**SCHEDULE I**

<b>Due Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Payment</b>
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## Exhibit D - FORM OF AMENDMENT

This document has been prepared by  
and, after recording, please return to:  
Christopher G. Kulp  
Hunton & Williams LLP  
951 East Byrd Street  
Richmond, Virginia 23219

Tax Parcel Number: \_\_\_\_\_

**RECORDER'S NOTE: THE INDUSTRIAL DEVELOPMENT AUTHORITY OF FAUQUIER COUNTY, VIRGINIA, AND THE COUNTY OF FAUQUIER, VIRGINIA, ARE EXEMPT FROM RECORDATION TAXES PURSUANT TO SECTION 58.1-811(E) OF THE CODE OF VIRGINIA OF 1950, AS AMENDED AND CLERK'S FEES PURSUANT TO SECTION 17.1-266 OF THE CODE OF VIRGINIA OF 1950, AS AMENDED**

### **Amendment to Note Purchase Agreement and Lease Agreement**

THIS AMENDMENT TO NOTE PURCHASE AGREEMENT AND LEASE AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (this "Amendment to Lease Agreement"), by and between the BOARD OF SUPERVISORS OF THE COUNTY OF FAUQUIER, VIRGINIA, on behalf of the COUNTY OF FAUQUIER, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County"), as lessor and grantor for indexing purposes, the INDUSTRIAL DEVELOPMENT AUTHORITY OF FAUQUIER COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "Authority"), as lessee and grantee for indexing purposes, and \_\_\_\_\_ Bank, a \_\_\_\_\_ banking corporation (the "Noteholder"), as purchaser of the Note, hereinafter described, provides:

### **WITNESSETH:**

**WHEREAS**, the parties hereto previously have entered into a Note Purchase Agreement and Lease Agreement dated as of \_\_\_\_\_ 1, 2009 (the "Lease Agreement"), whereby the Authority demised and leased to the County certain land and improvements located in the County of Fauquier, Virginia (as more fully described in Exhibit A hereto, the "Premises"), as security for a loan made by the Authority to the County in order to accomplish the undertaking of the Project (as defined in the Lease Agreement); and

**WHEREAS**, pursuant to the Lease Agreement, the County has the right to substitute the land and improvements described in Exhibit A hereto (the "\_\_\_\_\_ Property") for the Premises as the leased collateral under the Lease Agreement; and

**WHEREAS**, by deed dated \_\_\_\_\_, \_\_\_\_\_, and filed as Instrument No. \_\_\_\_\_ in the Clerk's Office of the County, the County [has acquired] [owns] fee simple title to the \_\_\_\_\_ Property and desires to substitute the \_\_\_\_\_ Property for the Premises as leased collateral under the Lease Agreement; and

**NOW, THEREFORE**, the parties hereto agree to amend the Lease Agreement as follows:

**Section 1. Lease of \_\_\_\_\_ Property.**

The Authority hereby demises and leases to the County, and the County hereby leases from the Authority, the \_\_\_\_\_ Property all on the same terms and conditions set forth in the Lease Agreement. Exhibit A of the Lease Agreement is hereby replaced with Exhibit A to this Amendment to Lease Agreement. The Premises originally described in Exhibit A to the Lease Agreement is hereby released from the terms of the Lease Agreement. All references in the various Sections of the Lease Agreement to the “Premises” shall be construed to be references to the \_\_\_\_\_ Property from and after the date hereof. The definition of “Premises” in Section 1 of the Lease Agreement is hereby amended and restated in its entirety to read as follows:

“Premises” shall mean that certain parcel of real property located in Fauquier County, Virginia, as more fully described in Exhibit A attached hereto, together with all improvements now or hereafter located thereon.

**Section 2. Counterparts.**

This Amendment to Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same Amendment to Lease Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to Lease Agreement to be duly executed this \_\_\_\_ days of \_\_\_\_\_, \_\_\_\_\_, by their duly authorized representatives.

**BOARD OF SUPERVISORS OF THE COUNTY OF  
FAUQUIER, VIRGINIA, on behalf of  
COUNTY OF FAUQUIER, VIRGINIA**

By \_\_\_\_\_  
County Administrator

COMMONWEALTH OF VIRGINIA    )  
\_\_\_\_\_)

The foregoing instrument was acknowledged before me in \_\_\_\_\_, Virginia, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by [Paul S. McCulla], County Administrator, County of Fauquier, Virginia.

My commission expires: \_\_\_\_\_

My Registration Number is: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, VIRGINIA**

By \_\_\_\_\_  
Chairman

COMMONWEALTH OF VIRGINIA    )  
\_\_\_\_\_                                    )

The foregoing instrument was acknowledged before me in \_\_\_\_\_, Virginia,  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Chairman, Industrial  
Development Authority of Fauquier County, Virginia.

My commission expires: \_\_\_\_\_

My Registration Number is: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ **BANK** , as purchaser of the Note

By \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA    )  
\_\_\_\_\_                                    )

The foregoing instrument was acknowledged before me in \_\_\_\_\_, Virginia,  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_ Bank.

My commission expires: \_\_\_\_\_

My Registration Number is: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Description of \_\_\_\_\_ Property**